

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FINANCIAL ASSISTANCE
EMERGENCY HOUSING AND ASSISTANCE PROGRAM CAPITAL DEVELOPMENT
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**Subject: Emergency Housing and Assistance Program Capital Development
General Building Contractor Bid Procedure Guidelines**

(This document supersedes any and all previous EHAPCD Bid Procedure Guidelines/Model Bid Packages that were authorized for use with EHAPCD Loans.)

Pursuant to the requirements of the State's Emergency Housing and Assistance Program Capital Development (EHAPCD) Loan Program, the Standard Agreement between the State of California, Department of Housing and Community Development (HCD), and each EHAPCD Borrower ("Borrower/Sponsor"), a competitive bid process must be utilized when awarding all general construction contracts for services and materials to be paid for with EHAPCD loan proceeds.

Attached is HCD's approved Bid Procedure Guidelines, which Borrower are strongly encouraged to use for the EHAPCD funded construction/rehabilitation activities identified in their Standard Agreement. The Bid Procedure Guidelines are designed to reduce delays in acquiring acceptance for Borrower's general construction/rehabilitation contracts. Use of the Bid Procedure Guidelines will expedite the required departmental review of your completed bid process.

The Bid Procedure Guidelines include the necessary forms and instructions needed for each Borrower to bid their particular construction/rehabilitation project, with the exception of the plans and specifications, written bidding procedures and contractor's questionnaire. Each Borrower shall provide the necessary forms, documents and information in the completed bid package for EHAPCD review **prior** to bid solicitation.

The bid solicitation period should be appropriate for the level of project complexity. Invitation shall be published in a paper of general circulation for a period of time sufficient to encourage responses to meet the desired minimum of three **responsible** bids. The minimum bid response time for minor construction/rehabilitation projects should be no fewer than ten days, while complex construction/rehabilitation projects may be given up to five weeks. HCD encourages a minimum three responsible bids. If a Borrower's solicitation results in less than three responsible bids, Borrower will be required to provide a written satisfactory explanation to HCD that a reasonable effort was made to attract "Responsible Bidders".

Effective January 1, 2002, all construction/rehabilitation work on State-funded developments shall be subject to the payment of State prevailing wages and compliance with the State Prevailing Wage Law, Labor Code 1720 et. seq. For the purpose of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation, or repair done under contract and paid for, in whole or in part, with EHAPCD loan proceeds.

State prevailing wage requirements may not apply to the new construction, expansion, or rehabilitation work by a nonprofit organization, on an emergency shelter or transitional housing facility to be operated on a not-for-profit basis, provided that:

- A) The organization acquires at least fifty percent (50%) of the total project costs from nonpublic sources. For the purposes of this exclusion, total project costs do not include the value of real property that is transferred or leased. Total project costs include the value of donated labor, materials, architectural, and engineering services;*
- B) If public funding in the form of below-market interest rate loans restricts the occupancy of at least forty percent (40%) of the project's units for at least twenty (20) years by deed or regulatory agreement to individuals or families earning no more than eighty percent (80%) of the area median income. Borrower/Sponsor is required to provide evidence supporting the exemption and a letter of opinion from their legal counsel; or*
- C) If the project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as an emergency shelter or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars (\$25,000).*

For all Borrowers who are not exempt from State prevailing wage rates, request current State prevailing wage rates from the State of California, Department of Industrial Relations (DIR). State prevailing wage rates (trade specific) can be found at <http://www.dir.ca.gov/dlsr/pwd>. If there is no residential wage rates published, then the higher commercial wage rates apply. State prevailing wage rates should be obtained from the DIR website prior to any advertisement for bids. Questions for complying with State prevailing wage rate requirements should be directed to DIR at (415) 703-4774.

HCD has approved the use of the 2007 Standard A.I.A. A101 Construction Contract to reduce the review and approval time of construction contracts. Any revisions to the standard language are subject to the prior written approval of HCD.

Construction/rehabilitation work shall be performed under a written general construction contract with a properly licensed general building contractor and shall incorporate the following requirements:

- A) The construction contract will be between the Borrower and a licensed general building contractor. Borrower shall serve as the "Awarding Body" as that term is defined in the Labor Code;
- B) Where Borrower will provide funds to a third party that will enter into the construction contract with a licensed general building contractor, the third party shall serve as the "Awarding Body"; and
- C) **The construction contract and any amendments thereto shall be subject to the prior written approval of HCD.**

If you have any questions about the bidding and contracting process, please contact your EHAPCD Contract Representative.

**State of California
Department of Housing and Community Development
Emergency Housing and Assistance Program Capital Development**

General Building Contractor Bid Procedure Guidelines

HCD Approved forms included in this package:

- Information for Bidders
- Contractor Questionnaire
- Contractor Bid Form
- Bid Bond (sample)
- Non-Collusive Affidavit
- Contractor's Certification
- Work Plan (cost breakdown)

WRITTEN BIDDING PROCEDURES:

Pursuant to the regulations of EHAPCD, each Borrower shall establish written bidding procedures for awarding all construction/rehabilitation contracts or subcontracts for services and materials to be paid for in whole or in part with EHAPCD loan proceeds. Written bidding procedures must be submitted to HCD for review and acceptance prior to advertising for bids. At a minimum the procedures shall address the following:

- 1) Sponsor's definition of "Responsible Bidder";
- 2) Draft of advertisement;
- 3) Proposed advertising schedule;
- 4) Evaluation criteria;
- 5) Process used to evaluate submitted bids (including any forms);
- 6) Sample of Borrower/Sponsor's Contractor's Questionnaire; and
- 7) Dispute process.

INVITATION FOR BIDS:

The published bid invitation must include the following information:

(Organization's Name) is requesting bids for (describe work to be performed, for example; to construct a 7,500 sq. ft. emergency shelter) in (City), CA. Work will be bound by all relevant regulations to satisfy (Lenders involved in funding construction project, for example; State of California, Department of Housing and Community Development and City of Sacramento funding requirements). For information and complete package of required bid forms, contact (Contact Person's Name) at (Organization's Name, address and phone number).

Bids will be received until _____ p. m. on the _____ day of _____, 20 _____ in the (Organization's Name) office located at _____, California, at which time and place all bids will be publicly opened and read aloud.

The plans and specifications are on file at the office of the (Organization's Name) and (any other place plans and specifications will be available).

A walk-through-inspection of the site is scheduled for _____, 20_____, at _____.

Local-, minority-, disadvantaged-, and women-owned businesses are encouraged to apply.

Invitation shall be published in a paper of general circulation for a period of time sufficient to encourage responses to meet the desired minimum of three **responsible** bids.

GENERAL BUILDING CONTRACTOR'S QUESTIONNAIRE:

At a minimum, General Building Contractor's Questionnaire should contain the following:

- 1) Current Date;
- 2) Contractor name (must include DBA);
- 3) Mailing address;
- 4) Phone number with area code;
- 5) California State Contractor's License Number;
- 6) Bank references;
- 7) List three (3) most recent, new-construction or remodeling jobs including, name, address and phone number;
- 8) Length of time in business;
- 9) Number of employees;
- 10) Specify if Contractor is an equal opportunity employer;
- 11) Indicate if Contractor is eligible to perform State government work;
- 12) Name and address of insurance carrier or broker and dollar amounts of coverages;
- 13) Conflict of Interest questions listed below; and
- 14) Signature of License Holder and, if applicable, signature of Company Representative.

Suggested Conflict of Interest Questions:

- A. "Are you, or any member of your family, related to any employee of the Department of Housing and Community Development?"
Yes _____ No _____. If yes, explain relationship.
- B. "Are you, or any member of your family, related to any board member or employee of Borrower/Sponsor?"
Yes _____ No _____. If yes, explain relationship.

Additional questions may be added to meet Borrower/Sponsor's minimum qualifications for a responsible bid.

GENERAL BUILDING CONTRACTOR'S BID PACKAGE:

In addition to access to the project's plans and specifications, each General Building Contractor must receive and if applicable, complete each of the following items:

- ✓ Information for Bidders
- ✓ Contractor Questionnaire
- ✓ Contractor Bid Form
- ✓ Bid Bond (sample)
- ✓ Non-Collusive Affidavit
- ✓ Contractor's Certification
- ✓ Work Plan (cost breakdown)

Bid Package Submission to EHAPCD:

When submitting required items, forms, letters, reports, and/or other documentation, original signatures are required for final executed copies.

Reference the EHAPCD loan number on documentation submitted to EHAPCD.

**State of California
Department of Housing and Community Development
Emergency Housing and Assistance Program Capital Development**

INFORMATION FOR BIDDERS (General Building Contractors)

A. BIDDER'S SECURITY

Bids in excess of twenty-five thousand dollars (\$25,000) shall be accompanied by a bid guarantee of not less than five percent (5%) of the amount of the bid which may be: bid bond, money order, certified check or bank draft, U.S. Government Bonds at par value, or cashier check, made payable to the Borrower/Sponsor. Such bid guarantee shall be submitted with the understanding that it shall guarantee that the Bidder will not withdraw the bid for thirty (30) days after the date of the opening of the bids and that if the bid is accepted, the Bidder will enter into a formal construction contract with the Borrower/Sponsor. Bid guarantees of unsuccessful Bidders will be returned when the construction contract is executed and performance and payment bonds are approved.

B. PAYMENT AND PERFORMANCE BONDS

Should this construction contract be awarded for an amount in excess of twenty-five thousand dollars (\$25,000) the successful Bidder shall, not later than fifteen (15) days after the date of the execution of the construction contract, furnish performance and payment bonds or equivalent security in form satisfactory to the Borrower/Sponsor and the State of California, Department of Housing and Community Development (HCD), each in the penal sum of not less than one hundred percent (100%) of the full amount of the executed construction contract.

C. SUBCONTRACTORS AND SUPPLIERS

The General Building Contractor shall be responsible under the construction contract for the acts and omissions of subcontractors, suppliers, and persons employed by them, either directly or indirectly, as fully as the General Building Contractor is for the acts and omissions of General Building Contractor employees. Nothing in the construction contract shall create any contractual relations between any subcontractor or supplier and the Borrower/Sponsor, or any obligation on the part of the Borrower/Sponsor to pay or cause to be paid any money to any subcontractor or supplier.

D. AWARD OF CONTRACT - REJECTION OF BIDS

The construction contract will be awarded to the lowest responsible Bidder submitting the lowest proposal complying with the construction contract documents and specifications. The Bidder to whom the award is made will be notified on the earliest practical date. The Borrower/Sponsor, however, reserves the right to reject all bids. HCD will review the Borrower/Sponsor's established bidding procedures and bid package to ensure that the Borrower/Sponsor has complied with EHAPCD Regulations Section 7971(c) et. seq., but shall not assist in the selection of the Contractor.

If the lowest bid submitted is not accepted, HCD requires a written explanation that addresses the reason(s) why the lowest bid was not considered a responsible bid. If HCD does not accept the explanation or if the Borrower/Sponsor chooses not to explain why the lowest bid was not considered responsible, then the Borrower/Sponsor must reject all bids.

E. INSPECTIONS BY BIDDER

Before Bidders complete and submit their bids, they shall thoroughly familiarize themselves with the construction contract documents and specifications, and its individual component parts. If the construction contract documents and specifications require the performance of labor or the installation or construction on the Borrower/Sponsor's real or personal property, Bidders shall visit the site where said work is to be performed or installation or construction completed and they shall familiarize themselves with the conditions and verify the requirements for completing the construction contract documents and specifications.

F. WITHDRAWAL OF BIDS

Bids may be withdrawn on a written, telegraphic, or facsimile request that must be received by the Borrower/Sponsor prior to the time fixed for bid opening, provided that written confirmation of any telegraphic or facsimile withdrawal over the signature of the Bidder is placed in the mail and postmarked prior to the time set for bid opening. Negligence on the part of Bidder in preparing their bid confers no right of withdrawal or modification of their bid after such bid has been opened.

G. INTERPRETATION AND CHANGES

Changes to the specifications will be made by addendum. It shall be Bidders' responsibility to make inquiry as to addenda issued. Bidders will be bound to addenda whether received or not. Bidders shall make their own independent investigation and analysis of the construction contract requirements. In the event of any question, Bidders should submit the question in writing to the Architect or Borrower/Sponsor's representative, who will circulate the question and a written reply, without identifying the source of question, to all Bidders who have picked up copies of the invitation for bids. The Borrower/Sponsor will not be bound by any interpretations, oral discussions, or interpretations of the plans, specifications, or construction contract documents which are not reduced to writing and provided to all Bidders by an addendum. If there is a patent ambiguity in the construction contract documents, plans or specifications, the Bidder is obligated to bring that ambiguity to the attention of Architect or Borrower/Sponsor's representative, prior to submission of a bid, and in the event of a failure to do so, will be bound by the Borrower/Sponsor's interpretation of the ambiguity.

H. FORM OF CONSTRUCTION CONTRACT ("CONTRACT") AND BONDS

The construction contract, which the successful Bidder, as General Building Contractor, will be required to execute and the form of any bond which she/he will be required to furnish are included in the construction contract documents and specifications and should be examined by the Bidder. The construction contract and any said bond shall be executed in the number of counterparts requested by the Borrower.

I. OPENING THE BIDS

Bids will be opened and publicly read aloud at the time and place set forth in the invitation for bids.

J. FAILURE TO EXECUTE CONTRACT OR FURNISH BOND

The failure of the successful Bidder to execute the construction contract or to furnish any required bond no later than fifteen (15) days from the date of the execution of the construction contract or within such extended period of time as the Borrower/Sponsor may grant based upon reasons determined adequate, shall constitute a default. The full amount of Bidder's Security shall be forfeited to the Borrower/Sponsor.

K. NON-COLLUSIVE AFFIDAVIT

The Bidder's attention is called to the fact that a bid is not completely executed and will not be considered for any purpose unless the Non-Collusive Affidavit is complete and correctly executed.

L. PENALTY FOR COLLUSION

If at any time it shall be found that any person, firm or corporation to whom a construction contract has been awarded has, in submitting any bid or bids, colluded with any other party or parties, then the construction contract so awarded shall be null and void. The General Building Contractor and his/her bondsperson shall be liable to the Borrower/Sponsor for all loss or damage, which the Borrower/Sponsor may suffer thereby, and the Borrower/Sponsor may re-advertise or select the next lowest responsible Bidder.

M. WAIVER

In submitting a bid, Bidders affirm that they have sufficiently informed themselves in all matters affecting the bid; that they have checked their bid for errors and omissions; that the prices stated in their bid are correct and as intended by them and are a complete and correct statement of their bid for the execution of the construction contract documents and specifications. Bidders waive any claim for the return of their Bidders' Security, if, on account of errors or omissions claimed to have been made by them in their bid or for any other reason, they should refuse or fail to execute the construction contract.

N. EXPERIENCE AND QUALIFICATIONS

Bidders may be required, upon request of the Borrower/Sponsor, to prove to its satisfaction that they have the skill, experience, the necessary facilities, meet the requirements of a "Responsible Bidder", and ample financial resources to perform the construction contract in a satisfactory manner within the required time.

O. TIME FOR PERFORMANCE

Within thirty (30) days of construction contract execution by the successful Bidder, the Borrower/Sponsor will issue a Notice to Proceed (form in Bid Procedure Guidelines Part 2) .

The Notice to Proceed shall specify a date for commencement of the work (the "Start Date"). The work to be performed pursuant to said construction contract shall be completed within _____ consecutive calendar days of the Start Date.

State of California
Department of Housing and Community Development
Emergency Housing and Assistance Program Capital Development

GENERAL BUILDING CONTRACTOR BID FORM

To: _____
(Borrower/Sponsor's Name and Address)

Pursuant to and in compliance with your invitation for bids, the undersigned, being familiar with the **CONSTRUCTION CONTRACT DOCUMENTS and SPECIFICATIONS** dated _____, and Addenda, if any thereto, hereby proposes to perform the work and/or deliver the materials, all in conformity with said invitation for bids and with said construction contract documents and specifications, for the sum of \$_____.

A. The above bid includes all labor, materials and equipment required by the construction contract documents and specifications.

B. In submitting this bid, the Bidder understands the right is reserved by (Sponsor's Name) to reject all bids.

The successful Bidder shall be required to provide a list of the names of persons or entities proposed as subcontractors and material and equipment providers prior to or at the time of signing the construction contract.

C. Bidder's Security, for a total bid amount in excess of \$25,000, in the sum of \$_____, in the form _____ of, is submitted herewith in accordance with the construction contract documents and specification.

D. Attached hereto are the following documents: (place an "X" on the blank line next to each required document accompanying this bid);

1. ___ Contractor's Questionnaire (Provided by Borrower/Sponsor)
2. ___ Bidder's Security (HCD Form)
3. ___ Non-collusive Affidavit (HCD Form)
4. ___ Contractor's Certification (HCD Form)
5. ___ Work Plan (Itemized cost breakdown) (HCD Form)
6. ___ List of proposed subcontractors

E. State Contractor's License Classification is as follows:

Classification _____

State Contractor's License No. _____

**State of California
Department of Housing and Community Development
Emergency Housing and Assistance Program Capital Development**

GENERAL BUILDING CONTRACTOR BID FORM (CONTINUED)

- F. Bidder acknowledges he/she has received a copy of the State of California, Department of Housing and Community Development, Emergency Housing and Assistance Program Capital Development "INFORMATION FOR BIDDERS (General Building Contractors)".
- G. The undersigned has checked all of the above information and understands that the Borrower/Sponsor will not be responsible for any errors or omissions on the part of the undersigned submitting this bid.

DATED

NAME OF BIDDER (General Building Contractor)

PHONE AND FAX NUMBERS

OFFICIAL ADDRESS

TITLE

AUTHORIZED SIGNER

**State of California
Department of Housing and Community Development
Emergency Housing and Assistance Program Capital Development**

BID BOND (SAMPLE)

KNOW ALL PEOPLE BY THESE PRESENTS, that we, the undersigned, _____
as Principal, and _____, as Surety, are held and firmly bound unto
_____, hereinafter called the Borrower/Sponsor, in the penal sum of _____
_____ DOLLARS (\$_____) in lawful money of the United States of America for the
payment of which, well and truly to be made, we hereby bind ourselves and ours and each of our
successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above-named Principal is about to hand in and submit a bid or proposal in
accordance with those certain construction contract documents and specifications entitled
CONTRACT DOCUMENTS AND SPECIFICATIONS FOR (insert name of Borrower/Sponsor and Project
Name) _____

Dated _____, and filed in the office of said Borrower/Sponsor.

NOW, THEREFORE, if the above named Principal is awarded the construction contract and shall
fail to enter into a construction contract to perform said construction contract and to furnish any and
all bonds in the form and in the amounts required under said construction contract documents and
specifications, along with any other certifications required under said construction contract
documents and specifications at the time of executing said construction contract, within fifteen (15)
days after the construction contract is presented for signature, then the amount herein, the penalty
of this bond which accompanies the bid, shall be declared forfeited and the full penal sum paid to
the _____.

IN WITNESS THEREOF, said Principal and said Surety have caused these presents to be duly
signed and sealed this _____ day of _____, 20____.

Signature of Bidder's Authorized Representative

Printed Name of Bidder's Authorized Representative

Title of Bidder's Authorized Representative

Phone Number of Bidder's Authorized Representative

**State of California
Department of Housing and Community Development
Emergency Housing and Assistance Program Capital Development**

NON-COLLUSIVE AFFIDAVIT

STATE OF CALIFORNIA

COUNTY of _____

_____, being first duly sworn, deposes and says:
(Insert Name of Bidder)

that he or she is the _____ of the
(Insert Title of Bidder)

firm of _____.

The party making the foregoing bid; that such bid is genuine and not collusive or sham; that said Bidder has not colluded, conspired, connived, or agreed, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person to fix the bid price of affiant or of any other Bidder, or to fix any overhead, profit or cost element of said bid price, or of any other Bidder, or to secure any advantage against the Borrower/Sponsor or any person interested in the proposed construction contract; and that all statements in said bid are true.

That neither Members of Congress, Local or State Public Officials, or any employee or representative of the Borrower/Sponsor is in any manner interested, directly or indirectly, in the bid to which this Non-Collusive Affidavit is attached, nor in the construction contract, which may be made pursuant to said bid, nor in any expected profits which may arise there from.

SIGNATURE OF:

Sole Proprietor, if Bidder is an individual:

_____ (Insert Name and Title of Sole Proprietor)	_____ (Printed Name and Title of Sole Proprietor)
---	--

General Partner, if Bidder is a partnership:

_____ (Insert Name and Title of General Partner)	_____ (Printed Name and Title of General Partner)
---	--

Officer, if Bidder is a corporation:

_____ (Insert Name of Officer)	_____ (Printed Name and Title of Officer)
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IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS NON-COLLUSIVE
AFFIDAVIT

STATE OF CALIFORNIA)
)
County of _____)

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
County of _____)

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**State of California
Department of Housing and Community Development
Emergency Housing and Assistance Program Capital Development**

GENERAL BUILDING CONTRACTOR'S CERTIFICATION

The undersigned further certifies that the Bidder who submitted the Bid to which this certification is attached, is appropriately licensed by, and in good standing with, the California Contractors' State License Board, and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

SIGNATURE OF:

Sole Proprietor, if Bidder is an individual:

(Name and Title of Sole Proprietor)

General Partner, if Bidder is a partnership:

(Name of Title General Partner)

Officer, if Bidder is a corporation

(Name of Officer)

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS GENERAL
BUILDING CONTRACTOR'S CERTIFICATION

STATE OF CALIFORNIA)
)
County of _____)

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
County of _____)

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

WORK PLAN (Cost Breakdown)

Note: Add additional work items as needed or edit to reflect scope of work.

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